

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

MFB FERTILITY INC.,

Plaintiff,

v.

WONDFO USA CO., LTD.,

Defendant

Case No. 23-cv-17000

Judge Robert W. Gettleman
Magistrate-Judge Gabriel A. Fuentes

JURY TRIAL DEMANDED

**DEFENDANT WONDFO USA CO., LTD.'S
ANSWER, AFFIRMATIVE DEFENSES, AND COUNTERCLAIM**

Defendant Wondfo USA Co., Ltd. (“Wondfo”) hereby submits its Answer and Affirmative Defenses to Plaintiff MFB Fertility Inc.’s (“MFB”) Amended Complaint and its Counterclaim against MFB as follows:

NATURE OF THE CASE

1. This is an action for copyright infringement.

RESPONSE: Wondfo admits that the Amended Complaint purports to bring a claim for copyright infringement.

2. Plaintiff, MFB Fertility Inc. researches, develops, and sells in-home tests for fertility tracking purposes.

RESPONSE: Wondfo is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 2 of the Amended Complaint and therefore denies the same.

3. MFB's in-home fertility tests (the "MFB products") are offered for sale in the United States measure the presence of progesterone metabolites in urine. Progesterone is a hormone produced in the ovaries after ovulation has occurred. The MFB products allow couples to better monitor their fertility at home.

RESPONSE: Wondfo admits progesterone is a hormone produced in the ovaries after ovulation has occurred. Wondfo is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 3 of the Amended Complaint and therefore denies the same.

4. The MFB products were the first at home ovulation confirmation test to obtain clearance by the United States Food and Drug Administration.

RESPONSE: Wondfo is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 4 of the Amended Complaint and therefore denies the same.

5. The MFB products have been utilized by tens of thousands of women across the United States to assist with ovulation confirmation.

RESPONSE: Wondfo is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 5 of the Amended Complaint and therefore denies the same.

6. Defendant, Wondfo, is an online retailer that sells progesterone test strips called the "Wondfo Progesterone (PDG) Urine Test" on Amazon and other channels.

RESPONSE: Wondfo admits that it manufactures its own brand name products that it makes available through online outlets. Wondfo denies that it currently sells progesterone test strips on Amazon, as MFB caused Amazon to remove the listing for that product.

7. Without authorization from MFB, Wondfo copied and distributed MFB's copyrighted instruction materials as part of Wondfo's instructions for using the Wondfo Progesterone (PDG) Urine Test (the "Wondfo instructions") which are packaged and distributed with that product.

RESPONSE: Deny.

8. Wondfo's unlawful conduct constitutes copyright infringement.

RESPONSE: Paragraph 8 of the Amended Complaint states legal conclusions, to which no response is required. To the extent that a response is required, Wondfo denies the allegations in Paragraph 8 of the Amended Complaint.

9. This Complaint seeks equitable and legal relief from Wondfo for its willful infringement of MFB's copyrights.

RESPONSE: Wondfo admits that the Amended Complaint purports to seek equitable and legal relief for alleged infringement. Wondfo denies the remaining allegations in Paragraph 9 of the Amended Complaint.

PARTIES

10. MFB is a Delaware corporation with a principal place of business in Boulder, Colorado.

RESPONSE: Wondfo is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 10 of the Amended Complaint and therefore denies the same.

11. Wondfo is an Illinois corporation with a principal place of business at 545 Willowbrook Parkway, Unit B, Willowbrook, Illinois, 60527.

RESPONSE: Admit.

JURISDICTION AND VENUE

12. This Court has jurisdiction over the subject matter of this action pursuant to the Copyright Act of 1976, as amended, 17 U.S.C. § 101, et seq. This Court has original jurisdiction over this action under 17 U.S.C. § 501 and 28 U.S.C. §§ 1331, 1332 and 1338(a) and (b), and 15 U.S.C. § 1121 and other applicable statutes.

RESPONSE: Paragraph 12 of the Amended Complaint states legal conclusions, to which no response is required. To the extent that a response is required, Wondfo denies the allegations in Paragraph 12 of the Amended Complaint.

13. This Court has personal jurisdiction over Wondfo as it has a place of business located in this judicial district.

RESPONSE: Paragraph 13 of the Amended Complaint states legal conclusions, to which no response is required. To the extent that a response is required, Wondfo denies the allegations in Paragraph 13 of the Amended Complaint.

14. This Court has personal jurisdiction over Wondfo because Wondfo transacts business in this District, and Wondfos products sold with the infringing Wondfo instruction manuals have been promoted, distributed, offered for sale, and sold within this judicial district.

RESPONSE: Paragraph 14 of the Amended Complaint states legal conclusions, to which no response is required. To the extent that a response is required, Wondfo denies the allegations in Paragraph 14 of the Amended Complaint.

15. Defendant conducts business through its website store on Amazon.com. Defendant's products sold with the infringing Wondfo instructions are available for purchase through Amazon.com, including to Illinois residents of this judicial district.

RESPONSE: Wondfo admits that it sells certain products on Amazon.com. Wondfo denies the remaining allegations in Paragraph 15 of the Amended Complaint.

16. Defendant has known of Plaintiff's copyright rights and continues to use Plaintiff's copyright to benefit the sales of its Progesterone (PDG) Urine Test. By doing so, Defendant has intentionally caused harm to Plaintiff in this district.

RESPONSE: Deny.

17. Defendant has directed its misuse and infringement of Plaintiff's copyright in the State of Illinois, with knowledge that Plaintiff's injury would occur in the State of Illinois.

RESPONSE: Deny.

18. This Court has personal jurisdiction over Defendant, as Defendant is engaged in copyright infringement directed at persons and entities residing in, located in or doing business in this district.

RESPONSE: Paragraph 18 of the Amended Complaint states legal conclusions, to which no response is required. To the extent that a response is required, Wondfo denies the allegations in Paragraph 18 of the Amended Complaint.

19. Defendant has purposefully availed itself of the privileges of conducting business in this judicial district and has established at sufficient minimum contacts with the State of Illinois such that it should reasonably and fairly anticipate being sued in a court in Illinois.

RESPONSE: Paragraph 19 of the Amended Complaint states legal conclusions, to which no response is required. To the extent that a response is required, Wondfo denies the allegations in Paragraph 19 of the Amended Complaint.

20. Venue is proper in this District under 28 U.S.C. §§ 1391(b) and (c) and 1400(a) because Defendant does business in this District and is subject to personal jurisdiction in this District.

RESPONSE: Paragraph 20 of the Amended Complaint states legal conclusions, to which no response is required. To the extent that a response is required, Wondfo denies the allegations in Paragraph 20 of the Amended Complaint.

BACKGROUND OF FACTS

21. Plaintiff MFB researches, develops, and sells in-home tests for fertility tracking purposes.

RESPONSE: Wondfo is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 21 of the Amended Complaint and therefore denies the same.

22. Plaintiff's founder and CEO, Dr. Amy Beckley, is a scientist with a PhD in Pharmacology and is a nationally recognized fertility expert.

RESPONSE: Wondfo is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 22 of the Amended Complaint and therefore denies the same.

23. In 2016, after experiencing her own fertility challenges, Dr. Beckley invented a test that measures the presence of progesterone metabolites in urine and allows women to confirm successful ovulation by tracking progesterone (PdG) levels at home. MFB promotes, offers for sale, and sells products utilizing such tests under the trademark PROOV®.

RESPONSE: Wondfo is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 23 of the Amended Complaint and therefore denies the same.

24. Products offered under the PROOV® brands were the first to obtain FDA approval as an at-home ovulation confirmation test and have been utilized by tens of thousands of women across the United States to assist with ovulation confirmation.

RESPONSE: Wondfo is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 24 of the Amended Complaint and therefore denies the same.

25. PROOV® branded products are particularly concerned with simple practical procedures that can readily be applied by unskilled persons, e.g., in the home, to provide reliable information concerning confirmation of whether ovulation has occurred, whether progesterone levels are sufficient to support a pregnancy, and other information relating to or deriving from the presence of progesterone in the body. In further with the sales of such products, MFB has created works to guide its users in such procedures and to address questions that its customers may have. One such work is the subject of MFB's copyright claim.

RESPONSE: Wondfo is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 25 of the Amended Complaint and therefore denies the same.

MFB'S REGISTERED COPYRIGHT

26. MFB owns all right, title and interest in the United States Copyright Certificate of Registration for the work "Ovulation Double Check," Registration No. TX 0008912832

(“MFB’s Registered Copyright”), effective November 11, 2020, and has standing to sue for enforcement of that copyright.

RESPONSE: Paragraph 26 of the Amended Complaint states legal conclusions, to which no response is required. To the extent that a response is required, Wondfo denies the allegations in Paragraph 26 of the Amended Complaint.

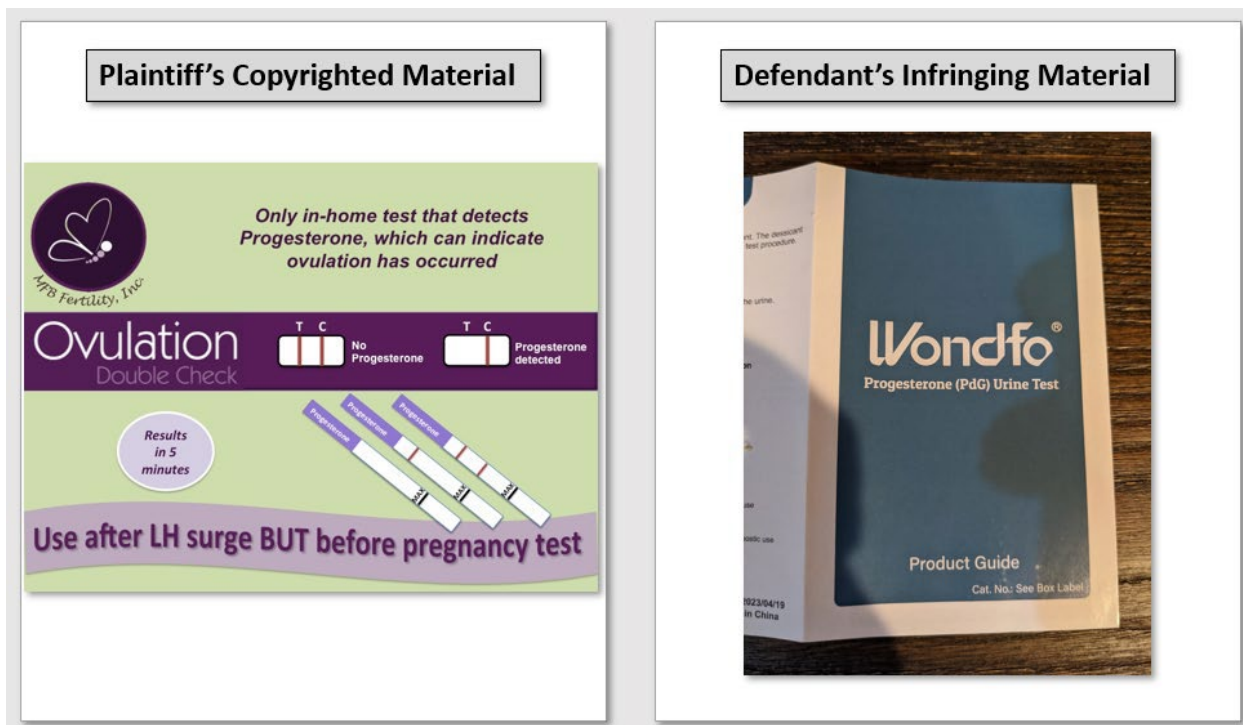
27. MFB’s Copyrighted Material that is the subject of Registration No. TX 0008912832 (MFB’s “Copyrighted Material”) is an original work of authorship in the form of a compilation comprising text, photographs, and artwork fixed in a tangible medium.

RESPONSE: Paragraph 27 of the Amended Complaint states legal conclusions, to which no response is required. To the extent that a response is required, Wondfo denies the allegations in Paragraph 27 of the Amended Complaint.

28. Defendant has promoted, advertised, offered for sale, and sold products which included instructions and product descriptions that are substantially similar to MFB’s Registered Copyright.

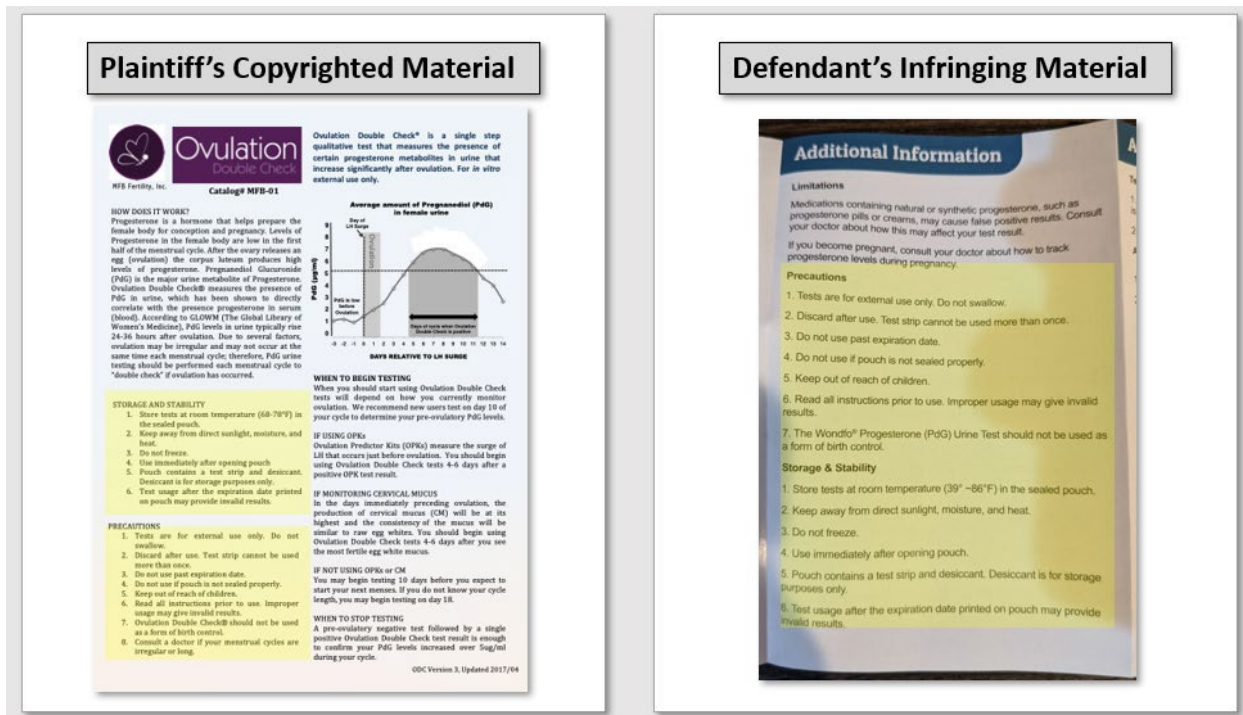
RESPONSE: Deny.

29. Defendant has copied MFB’s Copyrighted Material and violated MFB’s Registered Copyright. As can be seen below, Defendant’s product instructions for use of the Wondfo Progesterone (PdG) Urine Test name uses a combination and sequence of descriptions and phrases that are substantially similar to Plaintiff’s Copyrighted Material:



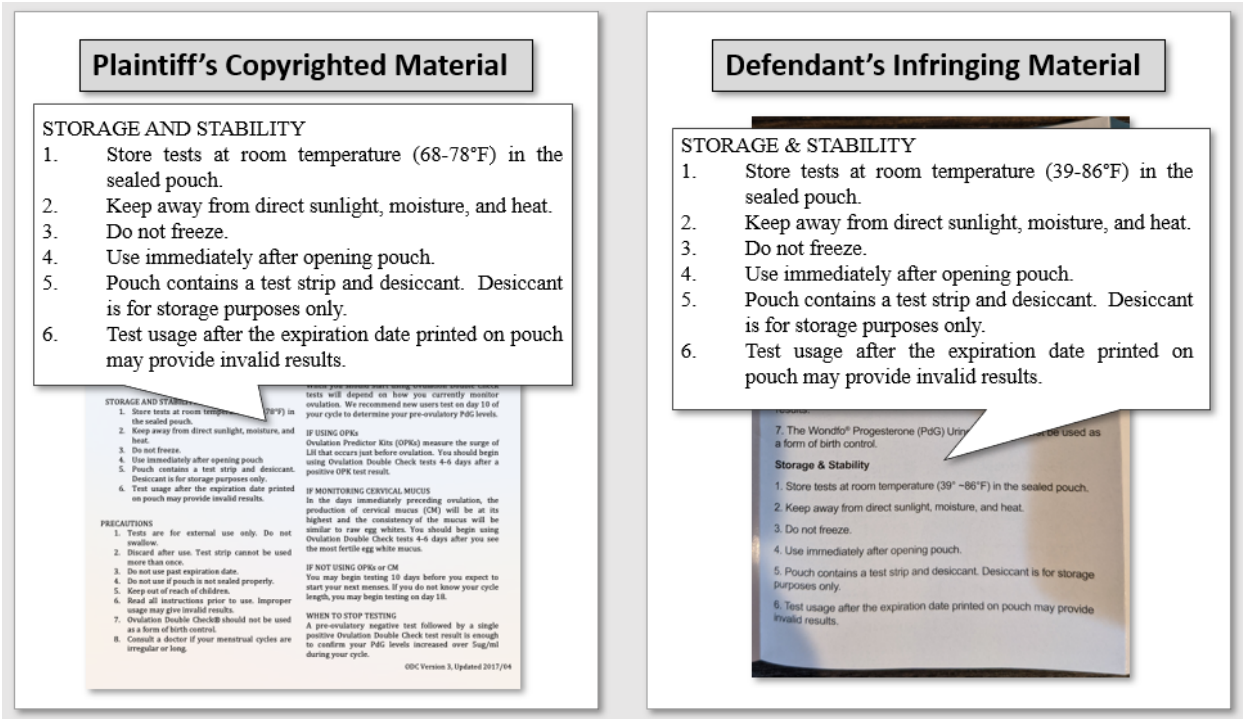
RESPONSE: Wondfo admits the image displayed on the right in Paragraph 29 of the Amended Complaint reproduces part of a former Wondfo product guide. Wondfo is without knowledge or information sufficient to form a belief as to the accuracy of the image displayed on the left in Paragraph 29 of the Amended Complaint and therefore denies the same. Wondfo denies the remaining allegations in Paragraph 29 of the Amended Complaint.

30. For example, the order and selection of points in the "STORAGE AND STABILITY" section of the MFB's Copyrighted Material was copied and used in the Defendants' infringing work:



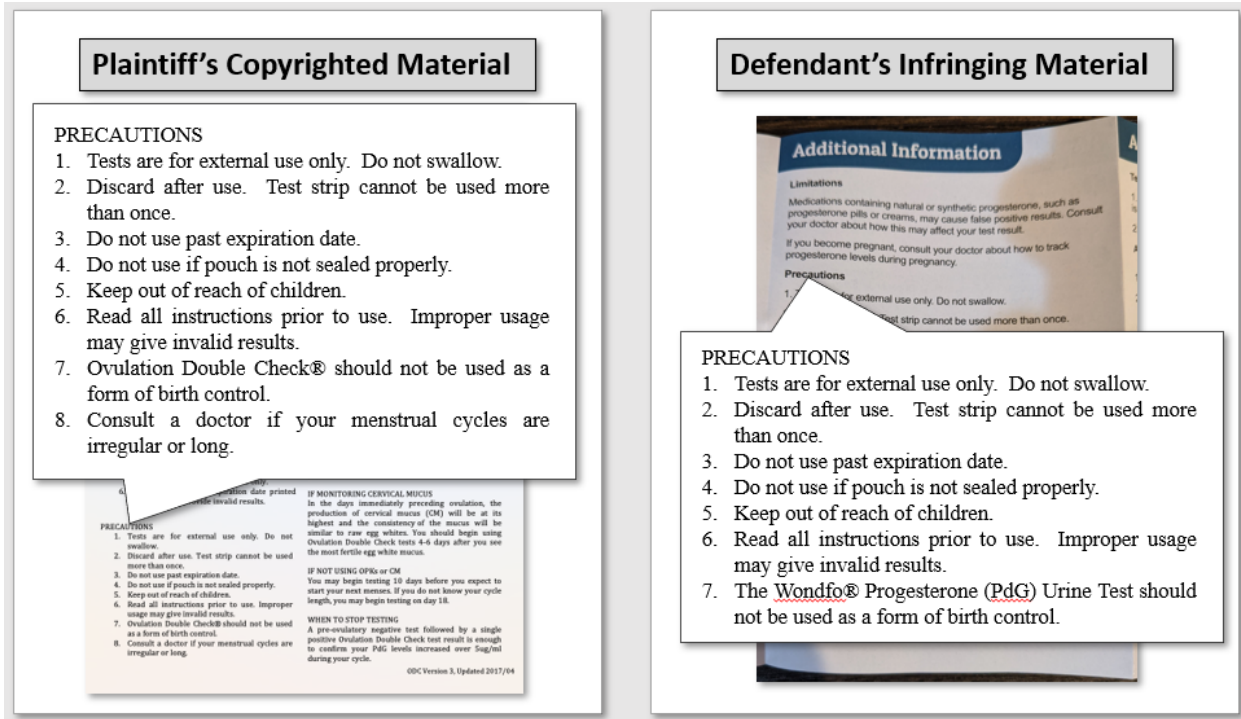
RESPONSE: Wondfo admits the image displayed on the right in Paragraph 30 of the Amended Complaint reproduces part of a former Wondfo product guide. Wondfo is without knowledge or information sufficient to form a belief as to the accuracy of the image displayed on the left in Paragraph 30 of the Amended Complaint and therefore denies the same. Wondfo denies the remaining allegations in Paragraph 30 of the Amended Complaint.

31. The "Storage & Stability" section of the Defendant's instruction manual copies the "Storage & Stability" section of the MFB Copyrighted Material and the MFB Registered Copyright:



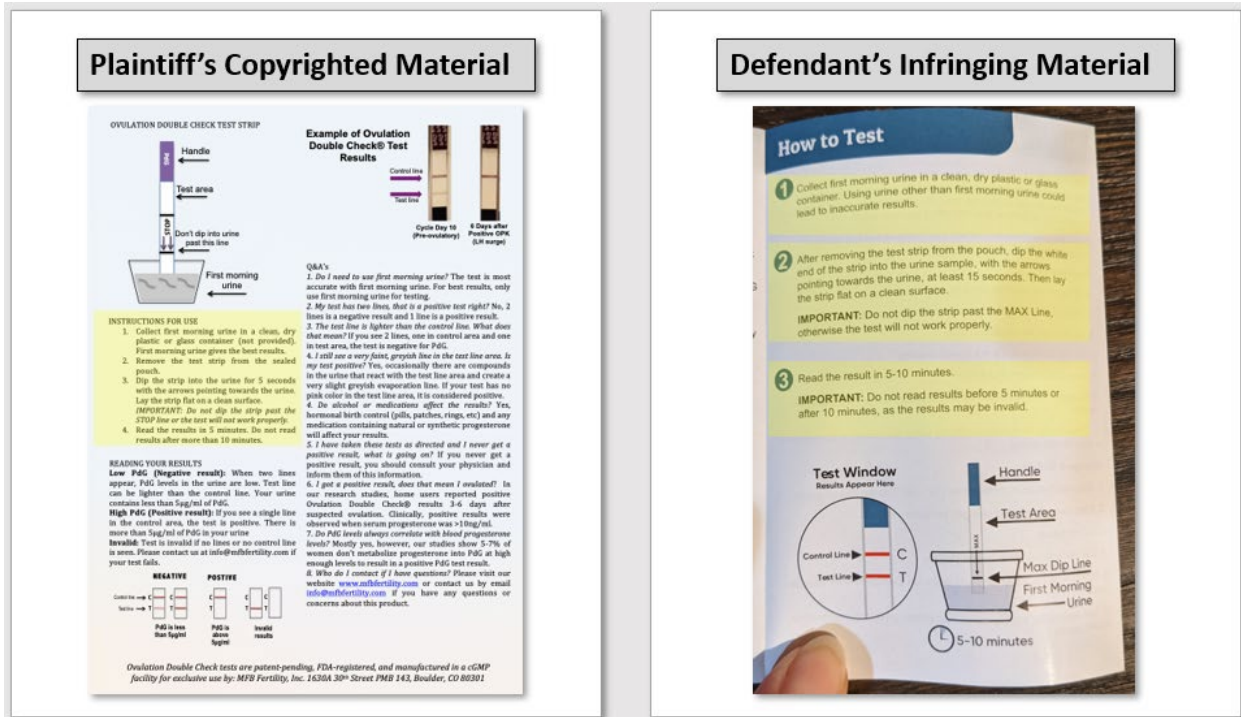
RESPONSE: Wondfo admits the image displayed on the right in Paragraph 31 of the Amended Complaint reproduces part of a former Wondfo product guide. Wondfo is without knowledge or information sufficient to form a belief as to the accuracy of the image displayed on the left in Paragraph 31 of the Amended Complaint and therefore denies the same. Wondfo denies the remaining allegations in Paragraph 31 of the Amended Complaint.

32. As a further example, the order and selection of points in the “PRECAUTIONS” section of the MFB Copyrighted Material and the MFB Registered Copyright was copied and used in the Defendants’ infringing work, including arbitrary capitalization (see e.g., the use of “Do” to start point 3 and “DO” to start point 4):



RESPONSE: Wondfo admits the image displayed on the right in Paragraph 32 of the Amended Complaint reproduces part of a former Wondfo product guide. Wondfo is without knowledge or information sufficient to form a belief as to the accuracy of the image displayed on the left in Paragraph 32 of the Amended Complaint and therefore denies the same. Wondfo denies the remaining allegations in Paragraph 32 of the Amended Complaint.

33. In addition, the order and selection of points in the "INSTRUCTIONS FOR USE" section of the MFB Copyrighted Material and the MFB Registered Copyright is substantially similar to that used in the Defendants' infringing work:



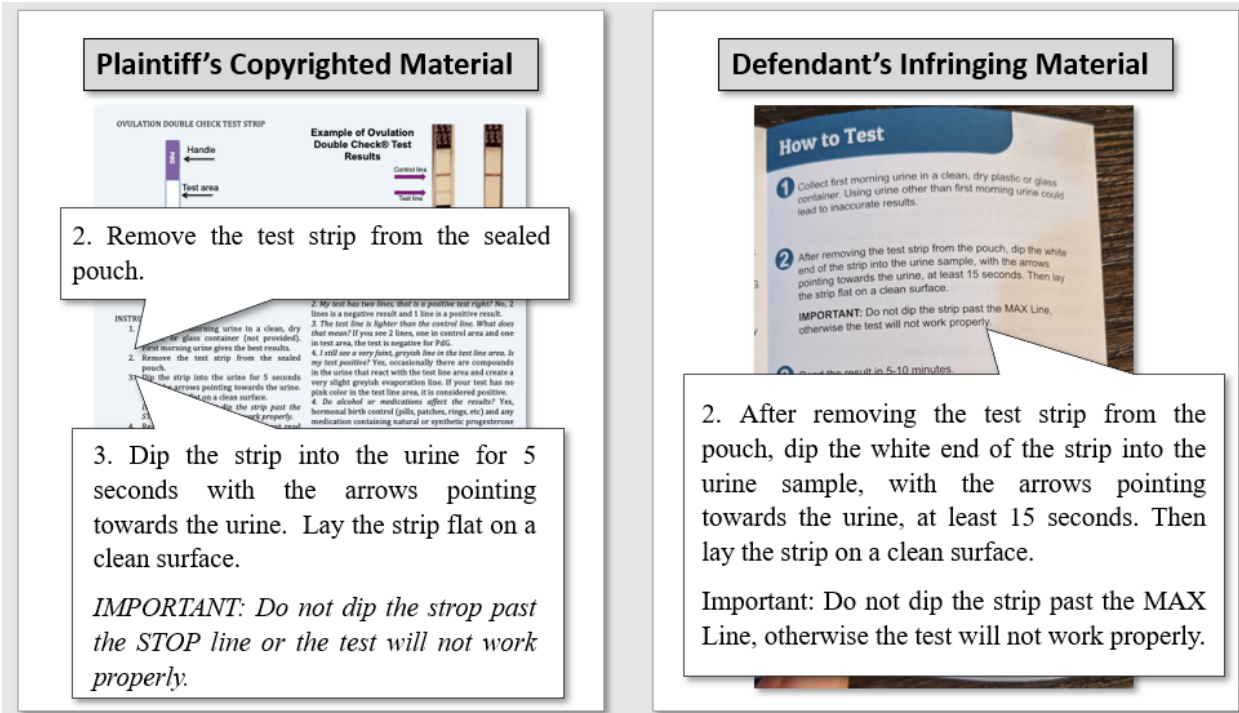
RESPONSE: Wondfo admits the image displayed on the right in Paragraph 33 of the Amended Complaint reproduces part of a former Wondfo product guide. Wondfo is without knowledge or information sufficient to form a belief as to the accuracy of the image displayed on the left in Paragraph 33 of the Amended Complaint and therefore denies the same. Wondfo denies the remaining allegations in Paragraph 33 of the Amended Complaint.

34. The first ordered instruction in the Defendant's infringing material is substantially similar to the statement "Collect first morning urine in a clean, dry plastic or glass container..." in the MFB Copyrighted Material and the MFB Registered Copyright as shown below:



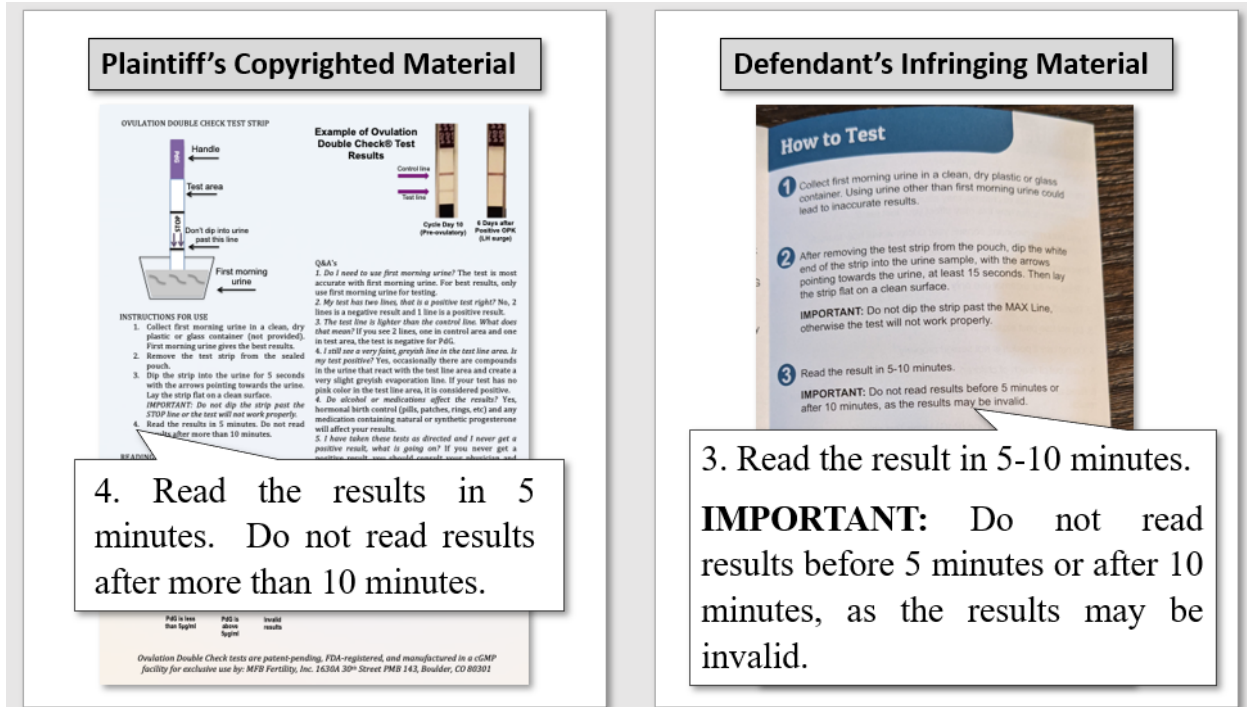
RESPONSE: Wondfo admits the image displayed on the right in Paragraph 34 of the Amended Complaint reproduces part of a former Wondfo product guide. Wondfo is without knowledge or information sufficient to form a belief as to the accuracy of the image displayed on the left in Paragraph 34 of the Amended Complaint and therefore denies the same. Wondfo denies the remaining allegations in Paragraph 34 of the Amended Complaint.

35. The second and third ordered instruction in the Defendant's infringing material is substantially similar to the statement "2. Remove the test strip from the sealed pouch." and "3. Dip the strip into the urine for 5 seconds with the arrows pointing toward the urine. Lay the strip flat on a clean surface" in the MFB Copyrighted Material and the MFB Registered Copyright. The Defendant's even copied the warning in the MFB Copyrighted Material and the MFB Registered Copyright as shown below:



RESPONSE: Wondfo admits the image displayed on the right in Paragraph 35 of the Amended Complaint reproduces part of a former Wondfo product guide. Wondfo is without knowledge or information sufficient to form a belief as to the accuracy of the image displayed on the left in Paragraph 35 of the Amended Complaint and therefore denies the same. Wondfo denies the remaining allegations in Paragraph 35 of the Amended Complaint.

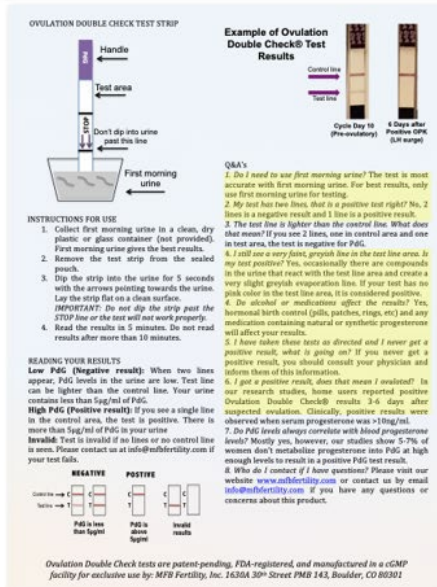
36. The fourth ordered instruction in the Defendant's infringing material is substantially similar to the statement "Read the results in 5 minutes. Do not read the results after 10 minutes." in the MFB Copyrighted Material and the MFB Registered Copyright as shown below:



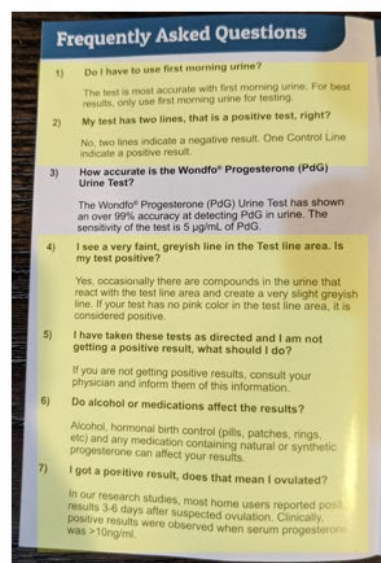
RESPONSE: Wondfo admits the image displayed on the right in Paragraph 36 of the Amended Complaint reproduces part of a former Wondfo product guide. Wondfo is without knowledge or information sufficient to form a belief as to the accuracy of the image displayed on the left in Paragraph 36 of the Amended Complaint and therefore denies the same. Wondfo denies the remaining allegations in Paragraph 36 of the Amended Complaint.

37. In addition, the language and selection of points in the "Frequently Asked Questions" ("FAQ") section of the Plaintiff's copyrighted work is substantially similar to that used in the Defendants' infringing work:

Plaintiff's Copyrighted Material

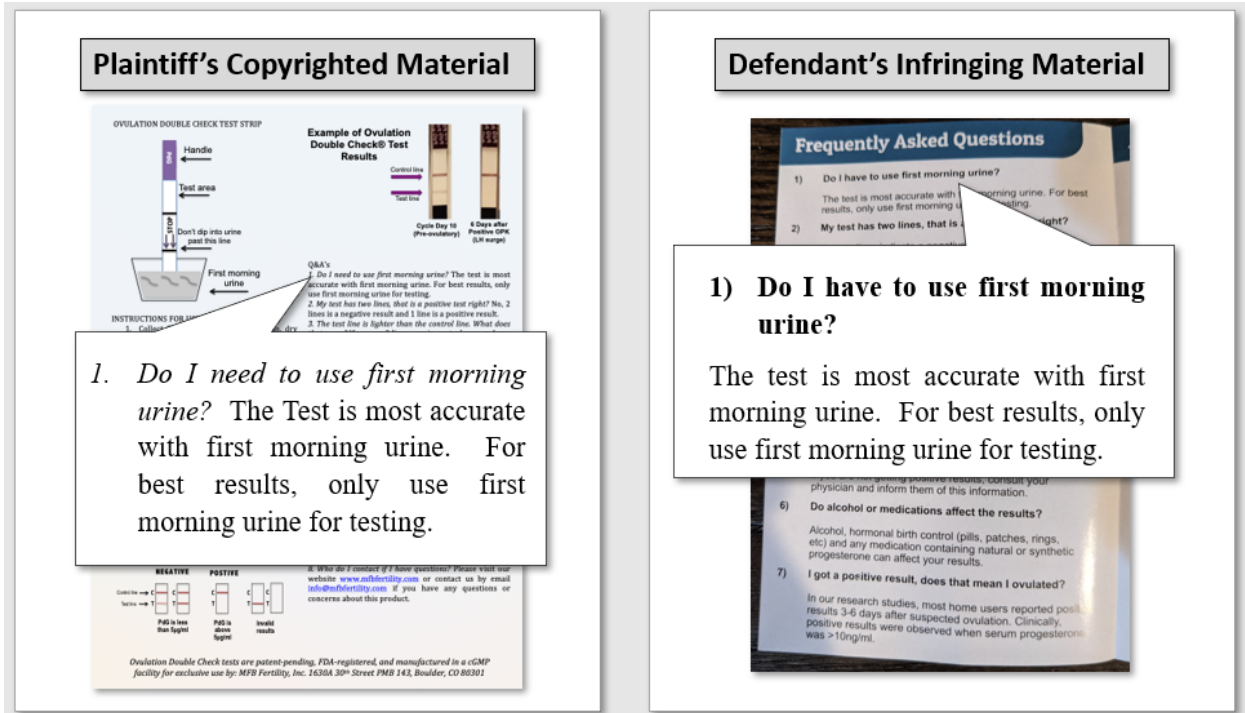


Defendant's Infringing Material



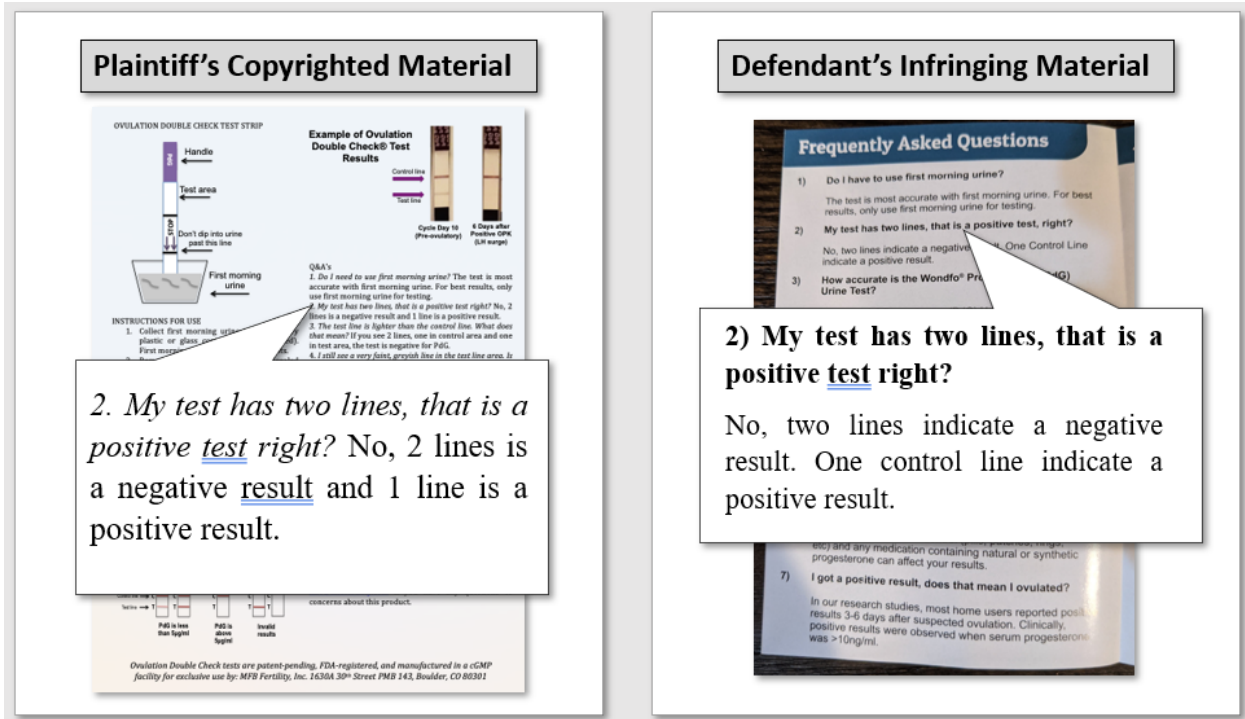
RESPONSE: Wondfo admits the image displayed on the right in Paragraph 37 of the Amended Complaint reproduces part of a former Wondfo product guide. Wondfo is without knowledge or information sufficient to form a belief as to the accuracy of the image displayed on the left in Paragraph 37 of the Amended Complaint and therefore denies the same. Wondfo denies the remaining allegations in Paragraph 37 of the Amended Complaint.

38. The first question in the FAQ section of the Defendant's infringing material is substantially similar to the first Q&A in the MFB Copyrighted Material and the MFB Registered Copyright "Do I need to use first morning urine?" as well as the response as shown below:



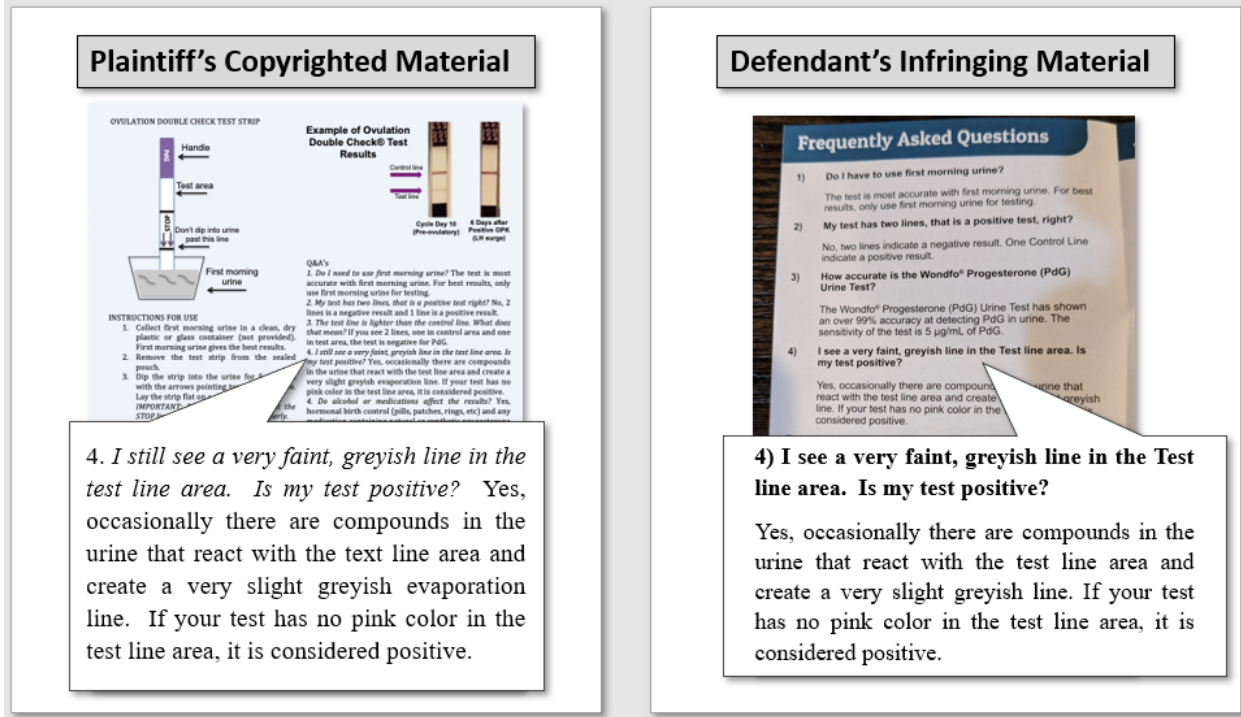
RESPONSE: Wondfo admits the image displayed on the right in Paragraph 38 of the Amended Complaint reproduces part of a former Wondfo product guide. Wondfo is without knowledge or information sufficient to form a belief as to the accuracy of the image displayed on the left in Paragraph 38 of the Amended Complaint and therefore denies the same. Wondfo denies the remaining allegations in Paragraph 38 of the Amended Complaint.

39. The second question in the FAQ section of the Defendant's infringing material is substantially similar to the second Q&A in the MFB Copyrighted Material and the MFB Registered Copyright "My test has two lines, that is a positive test right?" as well as the response as shown below:



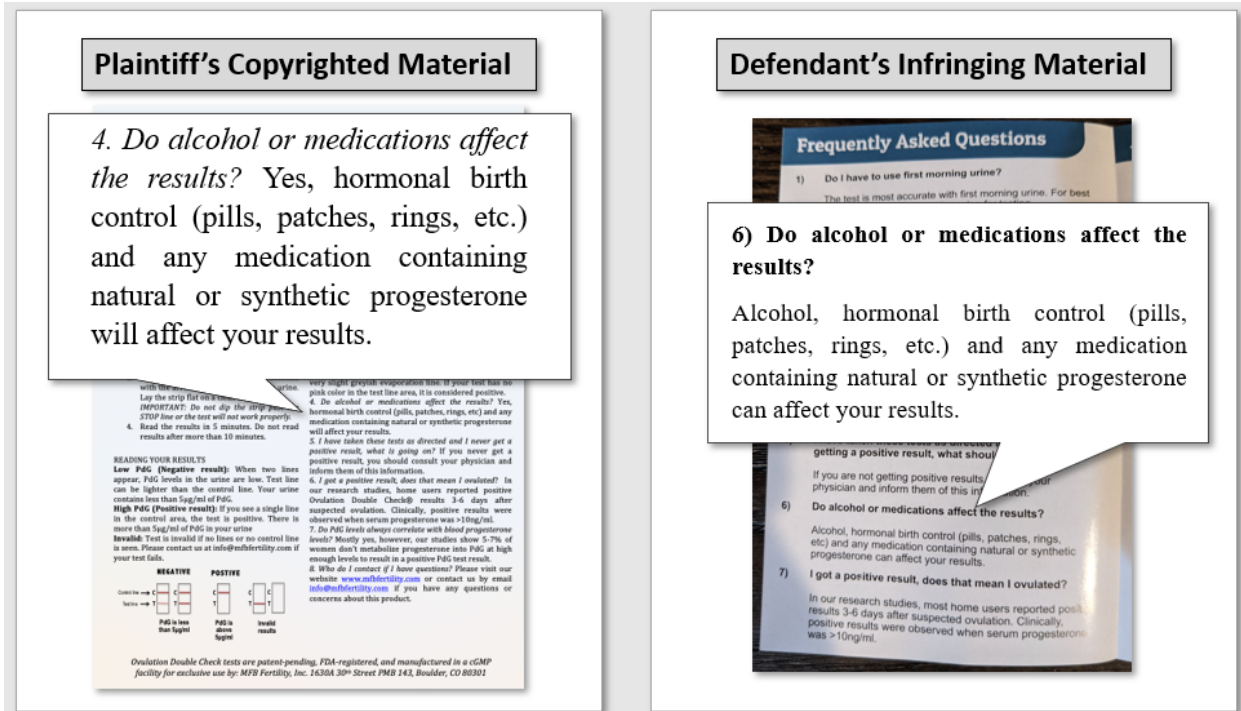
RESPONSE: Wondfo admits the image displayed on the right in Paragraph 39 of the Amended Complaint reproduces part of a former Wondfo product guide. Wondfo is without knowledge or information sufficient to form a belief as to the accuracy of the image displayed on the left in Paragraph 39 of the Amended Complaint and therefore denies the same. Wondfo denies the remaining allegations in Paragraph 39 of the Amended Complaint.

40. The fourth question in the FAQ section of the Defendant's infringing material is substantially similar to the fourth Q&A in the MFB Copyrighted Material and the MFB Registered Copyright "I still see a very faint, greyish line in the test line area. Is my test accurate?" as well as the response as shown below:



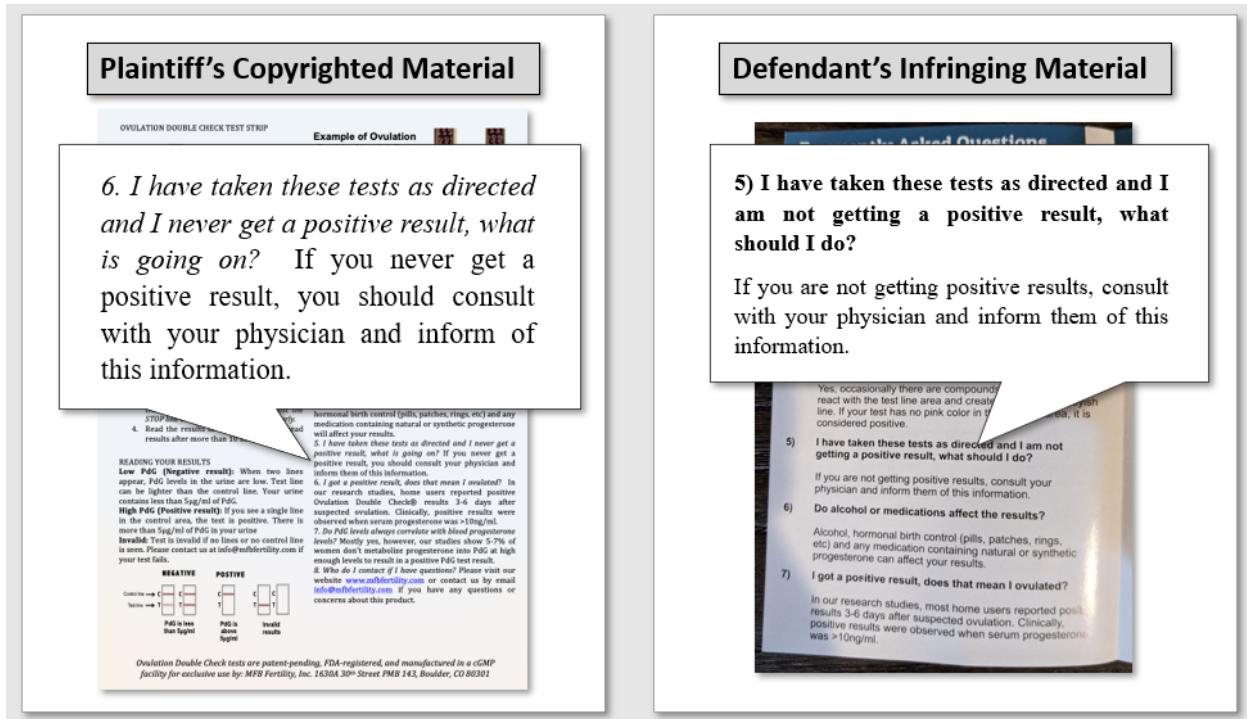
RESPONSE: Wondfo admits the image displayed on the right in Paragraph 40 of the Amended Complaint reproduces part of a former Wondfo product guide. Wondfo is without knowledge or information sufficient to form a belief as to the accuracy of the image displayed on the left in Paragraph 40 of the Amended Complaint and therefore denies the same. Wondfo denies the remaining allegations in Paragraph 40 of the Amended Complaint.

41. The sixth question in the FAQ section of the Defendant's infringing material is substantially similar to the fourth Q&A in the MFB Copyrighted Material and the MFB Registered Copyright "Do alcohol or medications affect the results?" as well as the response as shown below:



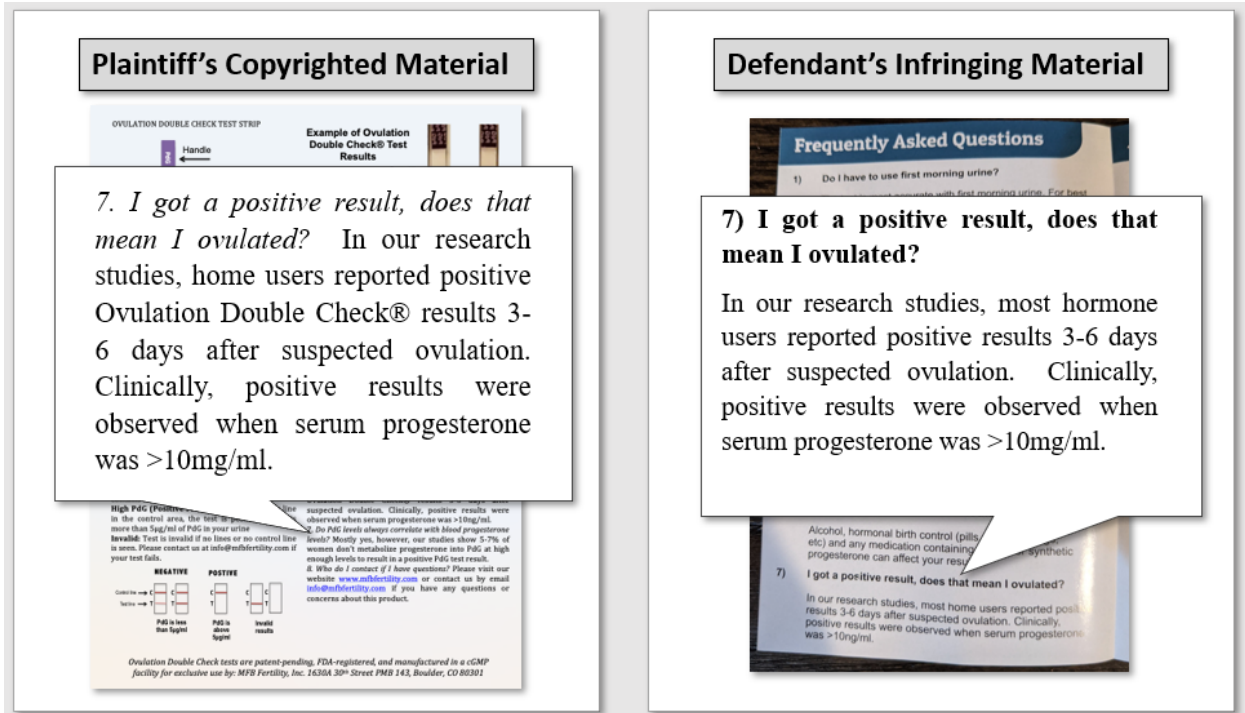
RESPONSE: Wondfo admits the image displayed on the right in Paragraph 41 of the Amended Complaint reproduces part of a former Wondfo product guide. Wondfo is without knowledge or information sufficient to form a belief as to the accuracy of the image displayed on the left in Paragraph 41 of the Amended Complaint and therefore denies the same. Wondfo denies the remaining allegations in Paragraph 41 of the Amended Complaint.

42. The fifth question in the FAQ question section of the Defendant's infringing material is substantially similar to the sixth Q&A in the MFB Copyrighted Material and the MFB Registered Copyright "I have taken these test as directed and I never get a positive result, what is going on?" as well as the response as shown below:



RESPONSE: Wondfo admits the image displayed on the right in Paragraph 42 of the Amended Complaint reproduces part of a former Wondfo product guide. Wondfo is without knowledge or information sufficient to form a belief as to the accuracy of the image displayed on the left in Paragraph 42 of the Amended Complaint and therefore denies the same. Wondfo denies the remaining allegations in Paragraph 42 of the Amended Complaint.

43. The seventh question in the FAQ section of the Defendant's infringing material is substantially similar to the seventh Q&A in the MFB Copyrighted Material and the MFB Registered Copyright "I got a positive result, does that mean I ovulated?" as well as the response as shown below:



RESPONSE: Wondfo admits the image displayed on the right in Paragraph 43 of the Amended Complaint reproduces part of a former Wondfo product guide. Wondfo is without knowledge or information sufficient to form a belief as to the accuracy of the image displayed on the left in Paragraph 43 of the Amended Complaint and therefore denies the same. Wondfo denies the remaining allegations in Paragraph 43 of the Amended Complaint.

44. When considered in the aggregate, Defendant's advertisements and product descriptions are substantially similar to Plaintiff's Copyrighted Material, including the selection and arrangement of points in the instructions.

RESPONSE: Deny.

45. Defendant's promotion, advertisement, offer for sale, and sale of products including Wondfo instructions which use Plaintiff's Copyrighted Material has resulted in damages to Plaintiff and caused Plaintiff irreparable injury.

RESPONSE: Deny.

46. Defendant does not have, nor has it ever sought, Plaintiff's authorization for the promotion, advertisement, offer for sale, and sale of products using Plaintiff's Copyrighted Material.

RESPONSE: Admit.

COUNT I: COPYRIGHT INFRINGEMENT

47. Plaintiff incorporates all prior allegations as if set forth fully herein.

RESPONSE: Wondfo incorporates its response to all prior allegations as if set forth fully herein.

48. Plaintiff is, and at all material times hereto has been, the owner of the copyrights in the Copyrighted Material and is entitled and authorized to protect itself against copyright infringement, including the enforcement of copyright actions against infringers.

RESPONSE: Wondfo is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 48 of the Amended Complaint and therefore denies the same.

49. Pursuant to 17 U.S.C. § 106, Plaintiff has the exclusive rights to reproduce, publicly display, and distribute the Copyrighted Material.

RESPONSE: Paragraph 49 of the Amended Complaint states legal conclusions, to which no response is required. To the extent that a response is required, Wondfo denies the allegations in Paragraph 49 of the Amended Complaint.

50. Pursuant to 17 U.S.C. § 106, Plaintiff has the exclusive right to prepare derivative works based upon the Copyrighted Material.

RESPONSE: Paragraph 50 of the Amended Complaint states legal conclusions, to which no response is required. To the extent that a response is required, Wondfo denies the allegations in Paragraph 50 of the Amended Complaint.

51. Plaintiff owns all right, title and interest in and to United States Copyright Certificate of Registration for Copyright No. TX 0008912832.

RESPONSE: Paragraph 51 of the Amended Complaint states legal conclusions, to which no response is required. To the extent that a response is required, Wondfo denies the allegations in Paragraph 51 of the Amended Complaint.

52. Defendant had access to the Copyrighted Material depicted in Copyright Registration No. TX 0008912832, as the Copyrighted Material has been available through purchase from the same online retail source (e.g., Amazon.com) as the Wondfo Progesterone (PDG) Urine Test product which is sold alone with the Defendant's infringing Wondfo instructions.

RESPONSE: Wondfo is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 52 of the Amended Complaint and therefore denies the same.

53. Defendant copied the Copyrighted Material depicted in Copyright Registration No. TX 0008912832. The instructions and used by Defendant used in conjunction with Defendant's Progesterone (PdG) Urine Test is substantially similar to the Copyright Registration No. TX 0008912832 entitled "Ovulation Double Check" in that the look and feel of Defendant's infringing material and the Copyrighted Material are substantially similar. Defendant has violated and infringed upon Plaintiff's Registered Copyright No. TX 0008912832.

RESPONSE: Deny.

54. Plaintiff became aware that Defendant was promoting, advertising, and offering for sale products using product descriptions and advertisements substantially similar to Plaintiff's Copyrighted Material.

RESPONSE: Deny.

55. Defendant has infringed and continues to infringe, Plaintiff's Copyrighted Material by reproducing, publicly displaying, promoting, advertising, and offering for sale products using instructions for use which are substantially similar to Plaintiffs Copyrighted Material without Plaintiff's authorization.

RESPONSE: Deny.

56. At a minimum, Defendant has acted in reckless disregard of Plaintiff's copyright interest in Plaintiff's previously registered Copyrighted Material. Thus, Defendant's infringement has been willful.

RESPONSE: Deny.

57. Plaintiff is entitled to its statutory damages (including an award for willful damages), or in the alternative actual damages, including Defendant's profits from infringement, in amounts to be proven at trial.

RESPONSE: Deny.

58. Defendant's conduct is causing and, unless enjoined by this Court, will continue to cause Plaintiff irreparable injury that cannot fully be compensated or measured in money. Plaintiff has no adequate remedy at law. Plaintiff has been irreparably harmed by the infringing acts. Pursuant to 17 U.S.C. § 502, Plaintiff is entitled to permanent injunctive relief prohibiting infringement of Plaintiff's copyrights and exclusive rights under copyright.

RESPONSE: Deny.

WHEREFORE, Plaintiff demands judgment against the Defendant as follows:

- A. A judgment finding that Defendant copied Plaintiff's Copyrighted Material and is liable for copyright infringement in each of the infringing acts;
- B. A judgment finding that Defendant, and all those in active concert or participation with it, be permanently enjoined from infringement of Plaintiff's copyrights in the Copyrighted Material pursuant to 17 U.S.C. § 502;
- C. A judgment and order for Defendant to account for and turn over to Plaintiff all copies or other articles by which copies of the Copyrighted Material may be reproduced pursuant to 17 U.S.C. § 503;
- D. An award of Plaintiff's actual damages, including Defendant's profits, in amounts to be proven at trial;
- E. An award of statutory damages and/or willful damages pursuant to 17 U.S.C. § 504;
- F. An award of attorneys' fees pursuant to 17 U.S.C. § 505;
- G. An award of prejudgment and post-judgment interest to provide such other remedies under the copyright laws of the United States and/or as the Court deems reasonable and just; and
- H. All other relief the Court deems just and fair.

Jury Demand

Plaintiff demands a trial by jury on all issues so triable to a jury.

AFFIRMATIVE DEFENSES

Wondfo asserts the following affirmative defenses without conceding that it bears the burden of proof as to any of the defenses pled. Wondfo reserves the right to amend or supplement these defenses and to take further positions as discovery proceeds in this case.

FIRST AFFIRMATIVE DEFENSE

(Fair Use Doctrine)

MFB's claim is barred, in whole or in part, by the "Fair Use Doctrine" pursuant to Section 107 of the Copyright Act, 17 U.S.C. §107. For instance, the alleged copyrighted material is factual in nature and many elements of the alleged copyrighted material are intended for educational purposes and to meet FDA disclosure requirements. Likewise, any alleged copying has had a *de minimis* effect, if any effect, on MFB's ability to profit from the alleged copyrighted material itself. MFB sells PdG test strips, not instructions or product inserts for PdG test strips. To the extent any of the alleged copyrighted material constitutes protectible expression (it does not), those elements of the alleged copyrighted material do not drive any demand for the PdG test strips or result in any profits.

SECOND AFFIRMATIVE DEFENSE

(Copyright Misuse / Unclean Hands)

MFB's claim is barred, in whole or in part, because it has engaged in one or more acts that have misused its copyrights including but not limited to having wrongfully attempted to extend the scope of the limited monopoly granted by the Copyright Act. These acts include filing baseless lawsuits against any competitor who attempts to disturb MFB's monopoly over PdG tests in the United States and failure to disclose that the alleged copyrighted material includes material copied from other works and that MFB is not the sole author of the alleged copyrighted

material. Moreover, the allegedly infringing material consists of FDA-required warnings, precautions, and instructions for use and storage of such diagnostic products. In other words, MFB is attempting to weaponize the Copyright Act in such a way that would prevent any prospective competitors from complying with FDA disclosure requirements and entering the market in the first instance. Wondfo reserves the right to assert one or more antitrust-related claims.

THIRD AFFIRMATIVE DEFENSE

(Works Not Protectable)

MFB's claim is barred, in whole or in part, because the contents of the alleged copyrighted material consist of non-protectable ideas and expressions. MFB alleges infringement of facts dictated by utilitarian concerns, such as those directed at the characteristics and intended use of PdG and other test strips, and other elements of the work that are so rudimentary, commonplace, standard, or unavoidable that they do not serve to distinguish one work within a class of works from another. Such elements do not demonstrate the requisite originality and creativity and are therefore not protectible.

FOURTH AFFIRMATIVE DEFENSE

(No Ownership)

MFB's claim is barred, in whole or in part, because it is not the owner of the copyrights at issue. At a minimum, many of the elements of the alleged copyrighted material are derived from other works that were not authored by MFB, including Wondfo's own works. Moreover, upon information and belief, MFB did not author the alleged copyright material.

FIFTH AFFIRMATIVE DEFENSE

(Merger)

MFB's claim is barred, in whole or in part, by the doctrine of merger. Facts such as instructions regarding the proper storage and use of PdG and other test strips can only be expressed in so many ways. The ideas behind such expressions and the expressions themselves are inseparable, rendering any expressions of such ideas non-protectable.

SIXTH AFFIRMATIVE DEFENSE

(Scènes à Faire)

MFB's claim is barred, in whole or in part, by the doctrine of *scènes à faire*. The instructions for a PdG test strip, how it works, when to use it, how to use it, how to interpret the results, how to store it, precautions, and frequently asked questions are rudimentary, commonplace, standard, or unavoidable *scènes à faire* for any instruction manual for a similar health test. The Copyright Act does not protect such indispensable or standard elements, which do not serve to distinguish one work within a class of works from another.

SEVENTH AFFIRMATIVE DEFENSE

(Lack of Willfulness)

MFB's claim is barred, in whole or in part, because Wondfo was not aware and had no reason to believe that its acts constitute an infringement of copyright as alleged. More specifically, as set forth above, Wondfo was the original author of elements of the alleged copyrighted material, and Wondfo has and had a good faith belief that elements of the alleged copyrighted material are not protectible at least under the doctrines of merger and *scènes à faire* and any purported use of the alleged copyright material constitutes fair use.

COUNTERCLAIM

Defendant Wondfo alleges the following Counterclaim against Plaintiff MFB:

PARTIES

1. Wondfo is an Illinois corporation with a principal place of business at 545 Willowbrook Parkway, Unit B, Willowbrook, Illinois, 60527.
2. Upon information and belief, MFB is a Delaware corporation with a principal place of business in Boulder, Colorado.

JURISDICTION AND VENUE

3. This Court has jurisdiction over the subject matter of this action pursuant to the Copyright Act of 1976, as amended, 17 U.S.C. § 101, et seq. This Court has original jurisdiction over this action under 17 U.S.C. § 501 and 28 U.S.C. §§ 1331, 1332 and 1338(a) and (b), and 15 U.S.C. § 1121 and other applicable statutes.
4. This Court has personal jurisdiction over MFB because MFB transacts business in this District, and MFB's products sold with the infringing MFB instruction manuals have been promoted, distributed, offered for sale, and sold within this judicial district.
5. MFB conducts business through its online storefront on Amazon.com and other online storefronts. MFB's products sold with the infringing MFB instructions are available for purchase through Amazon.com and those other storefronts, including to Illinois residents of this judicial district.
6. MFB has known of Wondfo's copyright and continues to use Wondfo's copyright to benefit the sales of its Progesterone (PDG) Urine Test. By doing so, MFB has intentionally caused harm to Wondfo in this district.

7. MFB has directed its misuse and infringement of Wondfo's copyright in the State of Illinois, with knowledge that Wondfo's injury would occur in the State of Illinois.

8. This Court has personal jurisdiction over MFB, as MFB is engaged in copyright infringement directed at persons and entities residing in, located in, or doing business in this district.

9. MFB has purposefully availed itself of the privileges of conducting business in this judicial district and has established sufficient minimum contacts with the State of Illinois such that it should reasonably and fairly anticipate being sued in a court in Illinois.

10. Likewise, this Court has personal jurisdiction over MFB because MFB consented to jurisdiction by initiating this action.

11. Venue is proper in this District under 28 U.S.C. §§ 1391(b) and (c) and 1400(a) because MFB does business in this District and has consented to venue in this District by initiating this action.

BACKGROUND OF FACTS

12. Wondfo is a leading manufacturer of rapid point-of-care tests in four major categories including toxicology testing, infectious disease, women's reproductive health, and veterinary diagnostics.

13. More specifically, Wondfo has been selling "lateral flow" test strip products for various applications for over twenty years. These products include various types of fertility, ovulation, and pregnancy test products.

14. MFB sells its own line of progesterone ("PdG") ovulation test products referred to as "Proov" through at least its online storefront on Amazon.com and other online storefronts.

15. Although MFB accuses Wondfo of infringing its copyright in this action, the alleged copyrighted material asserted by MFB actually infringes Wondfo's own copyrighted material, which preexisted MFB's alleged copyrighted material, the creation of its "Proov" products, and even MFB's corporate existence by at least four years.

WONDFO'S COPYRIGHTED MATERIAL

16. Wondfo's lateral flow test strip products contain product inserts that provide warnings and instructions relating to the proper storage and use of the products ("Wondfo's Copyrighted Material").

17. Wondfo owns all right, title, and interest to Wondfo's Copyrighted Material and has standing to sue for enforcement of its copyright to the material.

18. Wondfo's Copyrighted Material is an original work of authorship in the form of a compilation comprising text, photographs, and artwork fixed in a tangible medium.

19. Wondfo's Copyrighted Material was authored as early as 2012, and Wondfo began including the material with products sold in various markets, including the United States, as early as 2012 and no later than 2014.

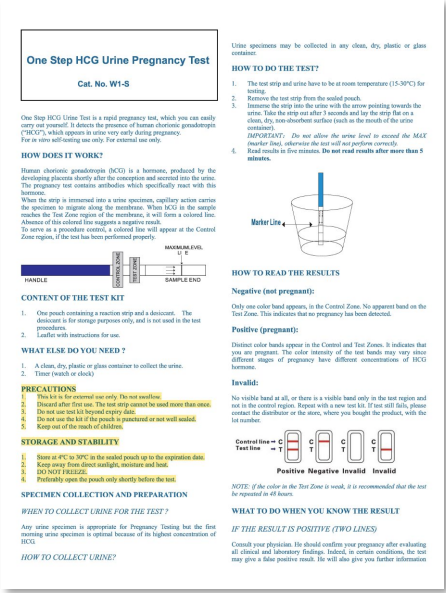
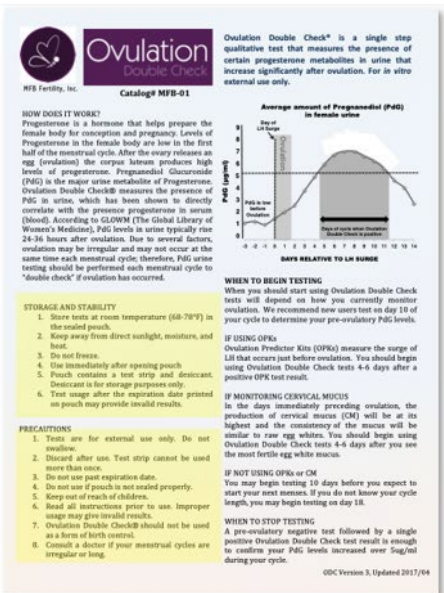
20. These Wondfo products included certain "W1-S" human chorionic gonadotropin ("HCG") pregnancy tests and "W2-S" lutenizing hormone ("LH") ovulation tests. The inserts enclosed with these products are attached hereto as **Exhibits A and B**.

21. MFB has promoted, advertised, offered for sale, and sold products which included instructions and product descriptions that are substantially similar to Wondfo's Copyrighted Material.



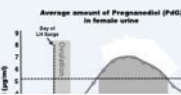
22. MFB has copied Wondfo's Copyrighted Material and violated Wondfo's copyright to the same. As can be seen below, MFB's product instructions for its "Proov" PdG






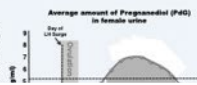
tests use a combination and sequence of descriptions and phrases that are substantially similar to Wondfo’s Copyrighted Material as included with Wondfo’s HCG pregnancy tests and LH ovulation tests.

23. For example, the order and selection of points in the “STORAGE AND STABILITY” and “PRECAUTIONS” sections of Wondfo’s Copyrighted Material was copied and used in MFB’s infringing work:

Wondfo’s Copyrighted Material	MFB’s Infringing Material
	
Ex. A; see also Ex. B.	See Amended Complaint.

24. The “STORAGE AND STABILITY” section of MFB’s infringing instruction is substantially similar to and copies, among other things, the order and selection of the first four points in the “STORAGE AND STABILITY” section of Wondfo’s Copyrighted Material:

Wondfo's Copyrighted Material	MFB's Infringing Material
<div><div><div><div>One Step HCG Urine Pregnancy Test</div><div>Cat. No. W1-S</div></div><div><p>One Step HCG Urine Test is a rapid pregnancy test, which you can easily carry out yourself. It detects the presence of human chorionic gonadotropin (HCG), which appears in urine very early during pregnancy. For in vitro self-testing use only. For external use only.</p><p>HOW DOES IT WORK?</p><p>Human chorionic gonadotropin (HCG) is a hormone, produced by the developing placenta shortly after the conception and secreted into the urine. The pregnancy test contains antibodies which specifically react with this hormone. When the strip is immersed into a urine specimen, capillary action carries the specimen to regions along the membrane. When HCG is the sample</p></div><div><p>Urine specimens may be collected in any clean, dry, plastic or glass container.</p><p>HOW TO DO THE TEST?</p><ol style="list-style-type: none">1. The test strip and urine have to be at room temperature (15-30°C) for testing.2. Remove the test strip from the sealed pouch.3. Immerse the strip into the urine with the arrow pointing towards the urine. Take the strip out after 3 seconds and lay the strip flat on a clean, dry, non-absorbent surface (such as the mouth of the urine container).4. IMPORTANT: Do not allow the urine level to exceed the MAX (marked) line, otherwise the test will not perform correctly. Read results in five minutes. Do not read results after more than 5 minutes.</div><div></div><div><p>STORAGE AND STABILITY</p><ol style="list-style-type: none">1. Store at 4°C to 30°C in the sealed pouch up to the expiration date.2. Keep away from direct sunlight, moisture and heat.3. DO NOT FREEZE.4. Preferably open the pouch only shortly before the test.</div><div><p>PRECAUTIONS</p><ol style="list-style-type: none">1. This kit is for external use only. Do not swallow.2. Discard after first use. The test strip cannot be used more than once.3. Do not use past its beyond expiry date.4. Do not use the kit if the pouch is punctured or not well sealed.5. Keep out of the reach of children.<p>STORAGE AND STABILITY</p><ol style="list-style-type: none">1. Store at 4°C to 30°C in the sealed pouch up to the expiration date.2. Keep away from direct sunlight, moisture and heat.3. DO NOT FREEZE.4. Preferably open the pouch only shortly before the test.<p>SPECIMEN COLLECTION AND PREPARATION</p><p>WHEN TO COLLECT URINE FOR THE TEST?</p><p>Any urine specimen is appropriate for Pregnancy Testing but the first morning urine specimen is optimal because of its highest concentration of HCG.</p><p>HOW TO COLLECT URINE?</p></div><div><p>Invalid:</p><p>No visible band at all, or there is a visible band only in the test region and not in the control region. Repeat with a new test kit. If you still fail, please contact the distributor or the store, where you bought the product, with the lot number.</p><p>Control line =  Positive Negative Invalid Invalid</p><p>NOTE: If the color in the Test Zone is weak, it is recommended that the test be repeated in 48 hours.</p><p>WHAT TO DO WHEN YOU KNOW THE RESULT</p><p>IF THE RESULT IS POSITIVE (TWO LINES)</p><p>Consult your physician. He should confirm your pregnancy after evaluating all clinical and laboratory findings. Indeed, in certain conditions, the test may give a false positive result. He will also give you further information.</p></div></div><div><div><div><div>Ovulation Double Check</div><div>MFB Fertility, Inc. Catalog# MFB-01</div></div><div><p>Ovulation Double Check® is a single step qualitative test that measures the presence of certain progesterone metabolites in urine that increase significantly after ovulation. For in vitro external use only.</p><p>HOW DOES IT WORK?</p><p>Progesterone is a hormone that helps prepare the female body for conception and pregnancy. Levels of Progesterone in the female body are low in the first half of the menstrual cycle. After the ovary releases an egg (ovulation) the corpus luteum produces high levels of progesterone. Pregnenolone Glucuronide (PAG) is the major urine metabolite of Progesterone.</p></div><div></div></div><div><p>STORAGE AND STABILITY</p><ol style="list-style-type: none">1. Store tests at room temperature (68-78°F) in the sealed pouch.2. Keep away from direct sunlight, moisture, and heat.3. Do not freeze.4. Use immediately after opening pouch.</div><div><p>PRECAUTIONS</p><ol style="list-style-type: none">1. Tests are for external use only. Do not swallow.2. Discard after use. Test strip cannot be used more than once.3. Do not use past expiration date.4. Do not use if pouch is not sealed properly.5. Keep out of reach of children.6. Read all instructions prior to use. Improper usage may give invalid results.7. Ovulation Double Check® should not be used as a form of birth control.8. Consult a doctor if your menstrual cycles are irregular or long.<p>IF MONITORING CERVICAL MUCUS</p><p>In the days immediately preceding ovulation, the production of cervical mucus (CM) will be at its highest and the consistency of the mucus will be similar to raw egg whites. You should begin using Ovulation Double Check tests 4-6 days after you see the most fertile egg white mucus.</p><p>IF NOT USING OPKs or CM</p><p>You may begin testing 10 days before you expect to start your next menses. If you do not know your cycle length, you may begin testing on day 18.</p><p>WHEN TO STOP TESTING</p><p>A pre-ovulatory negative test followed by a single positive Ovulation Double Check test result is enough to confirm your PAG levels increased over 7 days during your cycle.</p><p>ODC Version 3, Updated 2017/04</p></div></div></div> <div>Ex. A; <i>see also</i> Ex. B.</div> <div><i>See Amended Complaint.</i></div> <div>25. As a further example, the “PRECAUTIONS” section of MFB’s infringing instruction manual is substantially similar to and copies, among other things, the order and selection of the first five points in the “PRECAUTIONS” section of Wondfo’s Copyrighted Material:</div> <div>35</div>	

<div><div><div><div>Wondfo's Copyrighted Material</div></div></div></div> <div><div><div><div><div>One Step HCG Urine Pregnancy Test</div><div>Cat. No. W1-S</div></div><div><p>One Step HCG Urine Test is a rapid pregnancy test, which you can easily carry out yourself. It detects the presence of human chorionic gonadotropin ("HCG"), which appears in urine very early during pregnancy. For in vitro self-testing use only. For external use only.</p><p>HOW DOES IT WORK?</p><p>Human chorionic gonadotropin (HCG) is a hormone, produced by the developing placenta shortly after the conception and secreted into the urine. The pregnancy test contains antibodies which specifically react with this hormone.</p><p>When the strip is immersed into a urine specimen, capillary action carries the specimen to migrate along the membrane. When HCG in the sample reaches the Test Zone region of the membrane, it will form a colored line.</p></div><div><p>Urine specimens may be collected in any clean, dry, plastic or glass container.</p><p>HOW TO DO THE TEST?</p><ol style="list-style-type: none">1. The test strip and urine have to be at room temperature (15-30°C) for testing.2. Remove the test strip from the sealed pouch.3. Immerse the strip into the urine with the arrow pointing towards the urine. Take the strip out after 3 seconds and lay the strip flat on a clean, dry, non-absorbent surface (such as the mouth of the urine container).4. IMPORTANT: Do not allow the urine level to exceed the MAX (marked) line, otherwise the test will not perform correctly.5. Read results in five minutes. Do not read results after more than 5 minutes.</div><div></div><div><p>PRECAUTIONS</p><ol style="list-style-type: none">1. This kit is for external use only. Do not swallow.2. Discard after first use. The test strip cannot be used more than once.3. Do not use test kit beyond expiry date.4. Do not use the kit if the pouch is punctured or not well sealed.5. Keep out of the reach of children.</div><div><p>2. Time (read or check)</p><p>PRECAUTIONS</p><ol style="list-style-type: none">1. This kit is for external use only. Do not swallow.2. Discard after first use. The test strip cannot be used more than once.3. Do not use test kit beyond expiry date.4. Do not use the kit if the pouch is punctured or not well sealed.5. Keep out of the reach of children.<p>STORAGE AND STABILITY</p><ol style="list-style-type: none">1. Store at 4°C to 30°C in the sealed pouch up to the expiration date.2. Keep away from direct sunlight, moisture and heat.3. DO NOT FREEZE.4. Preferably open the pouch only shortly before the test.<p>SPECIMEN COLLECTION AND PREPARATION</p><p>WHEN TO COLLECT URINE FOR THE TEST?</p><p>Any urine specimen is appropriate for Pregnancy Testing but the first morning urine specimen is optimal because of its highest concentration of HCG.</p><p>HOW TO COLLECT URINE?</p></div><div><p>Invalid:</p><p>No visible band at all, or there is a visible band only in the test region and not in the control region. Repeat with a new test kit. If not self-falls, please contact the distributor or the store, where you bought the product, with the lot number.</p><p>Control line =    </p><p>Positive Negative Invalid Invalid</p><p>NOTE: If the color in the Test Zone is weak, it is recommended that the test be repeated in 48 hours.</p><p>WHAT TO DO WHEN YOU KNOW THE RESULT</p><p>IF THE RESULT IS POSITIVE (TWO LINES)</p><p>Consult your physician. He should confirm your pregnancy after evaluating all clinical and laboratory findings. Indeed, in certain conditions, the test may give a false positive result. He will also give you further information.</p></div></div><div><div><div><div>MFB's Infringing Material</div></div></div></div><div><div><div><div><div>Ovulation Double Check</div><div>MFB Fertility, Inc. Catalog# MFB-01</div></div><div><p>Ovulation Double Check® is a single step qualitative test that measures the presence of certain progesterone metabolites in urine that increase significantly after ovulation. For in vitro external use only.</p><p>HOW DOES IT WORK?</p><p>Progesterone is a hormone that helps prepare the female body for conception and pregnancy. Levels of Progesterone in the female body are low in the first half of the menstrual cycle. After the ovary releases an egg (ovulation) the corpus luteum produces high levels of progesterone. Pregnenolone Glucuronide</p></div><div></div></div><div><p>PRECAUTIONS</p><ol style="list-style-type: none">1. Tests are for external use only. Do not swallow.2. Discard after use. Test strip cannot be used more than once.3. Do not use past expiration date.4. Do not use if pouch is not sealed properly.5. Keep out of reach of children.</div><div><p>PRECAUTIONS</p><ol style="list-style-type: none">1. Tests are for external use only. Do not swallow.2. Discard after use. Test strip cannot be used more than once.3. Do not use past expiration date.4. Do not use if pouch is not sealed properly.5. Keep out of reach of children.6. Read all instructions prior to use. Improper usage may give invalid results.7. Ovulation Double Check® should not be used as a form of birth control.8. Consult a doctor if your menstrual cycles are irregular or long.<p>WHEN TO STOP TESTING</p><p>A pre-ovulatory negative test followed by a single positive Ovulation Double Check test result is enough to confirm your P4G levels increased over 5ug/ml during your cycle.</p><p>ODC Version 3, Updated 2017/04</p></div><div><p>on days immediately preceding ovulation, the production of cervical mucus (CM) will be at its highest and the consistency of the mucus will be similar to raw egg whites. You should begin using Ovulation Double Check tests 4-6 days after you see the most fertile egg white mucus.</p><p>IF NOT USING OPKs or CM</p><p>You may begin testing 10 days before you expect to start your next menses. If you do not know your cycle length, you may begin testing on day 18.</p></div></div></div><div>Ex. A; see also Ex. B.</div><div>See Amended Complaint.</div><div>26. In addition, the order and selection of points in the "INSTRUCTIONS FOR USE" section of MFB's infringing work is substantially similar to and copies Wondfo's Copyrighted Material:</div><div>36</div></div></div>

Wondfo's Copyrighted Material

One Step HCG Urine Pregnancy Test

Cat. No. W1-S

One Step HCG Urine Test is a rapid pregnancy test, which you can easily carry out yourself. It detects the presence of human chorionic gonadotropin ("HCG"), which appears in urine very early during pregnancy. For in vitro self-testing use only. For external use only.

HOW DOES IT WORK?

Human chorionic gonadotropin (HCG) is a hormone, produced by the developing placenta shortly after the conception and secreted into the urine. The pregnancy test contains antibodies which specifically react with this hormone. When the strip is immersed into urine specimen, capillary action carries the specimen to migrate along the membrane. When HCG in the sample reaches the Test Zone region of the membrane, it will form a colored line. Absence of this colored line suggests a negative result. In some as a pseudonegatives, a colored line will appear at the Control Zone region, if the test has been performed properly.

CONTENT OF THE TEST KIT

- One pouch containing a reaction strip and a desiccant. The desiccant is for storage purposes only, and is not used in the test procedure.
- Leaflet with instructions for use.

WHAT ELSE DO YOU NEED ?

- A clean, dry, plastic or glass container to collect the urine.
- Time (twelve to thirty seconds).

PRECAUTIONS

- This kit is for personal use only. Do not overuse.
- Discard after first use. The test strip cannot be used more than once.
- Do not use test kit beyond expiry date.
- Do not use the kit if the pouch is punctured or not well sealed.
- Keep out of the reach of children.

STORAGE AND STABILITY

- Store at 4°C to 30°C in the sealed pouch up to the expiration date.
- Keep away from direct sunlight, moisture and heat.
- DO NOT FREEZE.
- Prolonged open the pouch only shortly before the test.

SPECIMEN COLLECTION AND PREPARATION

WHEN TO COLLECT URINE FOR THE TEST?

Any urine specimen is appropriate for Pregnancy Testing but the first morning urine specimen is optimal because of its highest concentration of HCG.

HOW TO COLLECT URINE?

Urine specimens may be collected in any clean, dry, plastic or glass container.

HOW TO DO THE TEST?

- The test strip and urine have to be at room temperature (15-30°C) for testing.
- Remove the test strip from the sealed pouch.
- Immerse the strip into the urine with the arrow pointing towards the urine. Take the strip out after 3 seconds and lay the strip flat on a clean, dry, non-absorbent surface (look at the arrow of the urine container).
- IMPORTANT: Do not allow the urine level to exceed the MAX marker line; otherwise the test will not perform correctly. Read results in five minutes. Do not read results after more than 5 minutes.**

HOW TO READ THE RESULTS

Negative (not pregnant):

Only one color band appears, is the Control Zone. No apparent band on the Test Zone. This indicates that no pregnancy has been detected.

Positive (pregnant):

Distinct color bands appear in the Control and Test Zones. It indicates that you are pregnant. The color intensity of the test bands may vary since different stages of pregnancy have different concentrations of HCG hormone.

Invalid:

No visible band at all, or there is a visible band only in the test region and not in the control region. Repeat with a new test kit. If test still fails, please contact the distributor or the store, where you bought the product, with the lot number.

NOTE: If the color in the Test Zone is weak, it is recommended that the test be repeated in 48 hours.

WHAT TO DO WHEN YOU KNOW THE RESULT

IF THE RESULT IS POSITIVE (TWO LINES)

Consult your physician. He should confirm your pregnancy after evaluating all clinical and laboratory findings. Indeed, in certain conditions, the test may give a false positive result. He will also give you further information.

MFB's Infringing Material

OVULATION DOUBLE CHECK TEST STRIP

Example of Ovulation Double Check® Test Results

Control line
Test line

Cycle Day 10 (Pre-ovulatory) 8 Days after Positive OPK (Just before ovulation)

Don't dip into urine past this line

First morning urine

INSTRUCTIONS FOR USE

- Collect first morning urine in a clean, dry plastic or glass container (not provided). First morning urine gives the best results.
- Remove the test strip from the sealed pouch.
- Dip the strip into the urine for 5 seconds with the arrows pointing towards the urine. Lay the strip flat on a clean surface. **IMPORTANT: Do not dip the strip past the STOP line or the test will not work properly.**
- Read the results in 5 minutes. Do not read results after more than 10 minutes.

READING YOUR RESULTS

Low PdG (Negative result): When two lines appear, PdG levels in the urine are low. Test line can be lighter than the control line. Your urine contains less than 500ng/ml of PdG.

High PdG (Positive result): If you see a single line in the control area, the test is positive. There is more than 500ng/ml of PdG in your urine.

Invalid: Test is invalid if no lines or no control line is seen. Please contact us at info@infertility.com if your test fails.

NEGATIVE **POSITIVE**

Control line
Test line

PdG is less than 500ng/ml

PdG is above 500ng/ml

Invalid results

Ovulation Double Check tests are patent-pending, FDA-registered, and manufactured in a cGMP facility for exclusive use by: MFB Fertility, Inc. 1636A 30th Street PMB 143, Boulder, CO 80501

Ex. A; see also Ex. B.

See Amended Complaint.

27. The second and third ordered instruction in MFB’s infringing material is substantially similar to the statement “2. Remove the test strip from the sealed pouch.” and “3. Immerse the strip into the urine with the arrow pointing towards the urine. Take the strip out after 3 seconds and lay the strip flat on a clean, dry, non-absorbent surface[.]” in Wondfo’s Copyrighted Material. The Defendant’s even copied the warning in Wondfo’s Copyrighted Material as shown below:

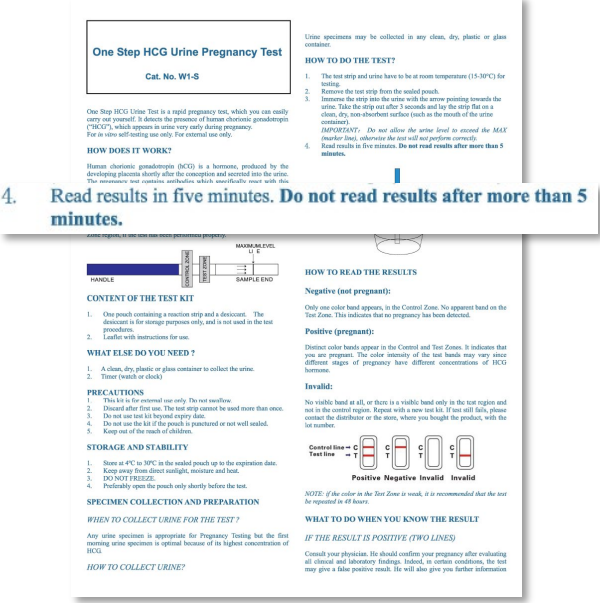
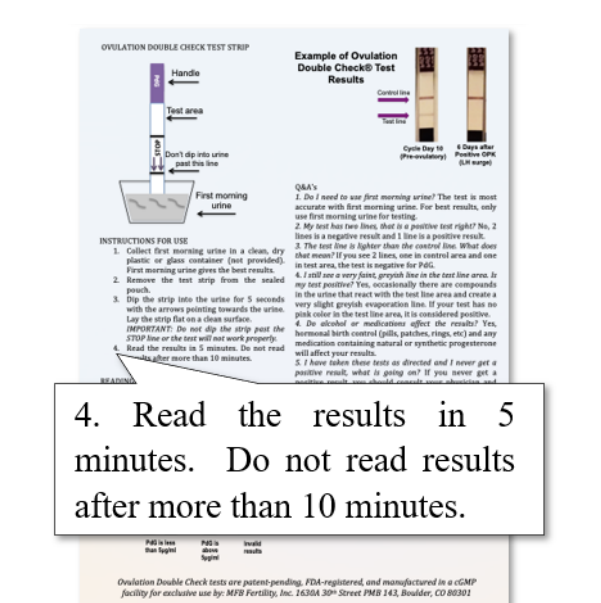
37

Wondfo's Copyrighted Material	MFB's Infringing Material
<div><div><div><div>One Step HCG Urine Pregnancy Test</div><div>Cat. No. W1-S</div></div><div><p>Urine specimens may be collected in any clean, dry, plastic or glass container.</p><p>HOW TO DO THE TEST?</p><ol style="list-style-type: none">1. The test strip and urine have to be at room temperature (15-30°C) for testing.2. Remove the test strip from the sealed pouch.3. Immerse the strip into the urine with the arrow pointing towards the urine. Take the strip out after 3 seconds and lay the strip flat on a clean, dry, non-absorbent surface (such as the mouth of the urine container).4. Read results in five minutes. Do not read results after more than 5 minutes.<p>IMPORTANT: Do not allow the urine level to exceed the MAX (marker line), otherwise the test will not perform correctly.</p></div></div><div><div><p>2. Remove the test strip from the sealed pouch.</p><p>3. Immerse the strip into the urine with the arrow pointing towards the urine. Take the strip out after 3 seconds and lay the strip flat on a clean, dry, non-absorbent surface (such as the mouth of the urine container).</p><p>IMPORTANT: Do not allow the urine level to exceed the MAX (marker line), otherwise the test will not perform correctly.</p></div><div><p>WHAT ELSE DO YOU NEED?</p><ol style="list-style-type: none">1. A clean, dry, plastic or glass container to collect the urine.2. Urine (urine or blood).<p>PRECAUTIONS</p><ol style="list-style-type: none">1. This kit is for external use only. Do not swallow.2. Discard after first use. The test strip cannot be used more than once.3. Do not use until the expiry date.4. Do not use the kit if the pouch is punctured or not well sealed.5. Keep out of the reach of children.<p>STORAGE AND STABILITY</p><ol style="list-style-type: none">1. Store at 4°C to 30°C in the sealed pouch up to the expiration date.2. Keep away from direct sunlight, moisture and heat.3. DO NOT FREEZE.4. Prolonged open the pouch only shortly before the test.<p>SPECIMEN COLLECTION AND PREPARATION</p><p>WHEN TO COLLECT URINE FOR THE TEST?</p><p>Any urine specimen is appropriate for Pregnancy Testing but the first morning urine specimen is optimal because of its highest concentration of HCG.</p><p>HOW TO COLLECT URINE?</p></div><div><p>Positive (pregnant):</p><p>Distinct color bands appear in the Control and Test Zones. It indicates that you are pregnant. The color intensity of the test bands may vary since different stages of pregnancy have different concentrations of HCG hormones.</p><p>Invalid:</p><p>No visible band at all, or there is a visible band only in the test region and not in the control region. Repeat with a new test kit. If you still fail, please contact the distributor or the store, where you bought the product, with the lot number.</p><p>Control line Test line</p><p>Positive Negative Invalid Invalid</p><p>NOTE: If the color in the Test Zone is weak, it is recommended that the test be repeated in 48 hours.</p><p>WHAT TO DO WHEN YOU KNOW THE RESULT</p><p>IF THE RESULT IS POSITIVE (TWO LINES)</p><p>Consult your physician. He should confirm your pregnancy after evaluating all clinical and laboratory findings. Indeed, in certain conditions, the test may give a false positive result. He will also give you further information.</p></div></div></div>	<div><div><div><div>OVULATION DOUBLE CHECK TEST STRIP</div><div>Handle</div><div>Test area</div></div><div><p>Example of Ovulation Double Check® Test Results</p><p>Control line</p><p>Test line</p></div></div><div><p>2. Remove the test strip from the sealed pouch.</p></div><div><p>3. Dip the strip into the urine for 5 seconds with the arrows pointing towards the urine. Lay the strip flat on a clean surface.</p><p>IMPORTANT: Do not dip the strip past the STOP line or the test will not work properly.</p></div></div>

Ex. A; see also Ex. B.

See Amended Complaint.

28. The fourth ordered instruction in MFB's infringing material is substantially similar to the statement "Read results in 5 minutes. Do not read results after more than 5 minutes." in Wondfo's Copyrighted Material as shown below:

Wondfo's Copyrighted Material	MFB's Infringing Material
 <p>Ex. A; see also Ex. B.</p>	 <p>See Amended Complaint.</p>

29. When considered in the aggregate, MFB's advertisements and product descriptions are substantially similar to Wondfo's Copyrighted Material, including the selection and arrangement of points in the instructions.

30. MFB's promotion, advertisement, offer for sale, and sale of products including instructions which use Wondfo's Copyrighted Material has resulted in damages to Wondfo and caused Wondfo irreparable injury.

31. MFB does not have, nor has it ever sought, Wondfo's authorization for the promotion, advertisement, offer for sale, and sale of products using Wondfo's Copyrighted Material.

COUNT I: COPYRIGHT INFRINGEMENT

32. Wondfo incorporates all prior allegations as if set forth fully herein.

33. Wondfo is, and at all material times hereto has been, the owner of the copyright in Wondfo's Copyrighted Material and is entitled and authorized to protect itself against copyright infringement, including the enforcement of copyright actions against infringers.

34. Pursuant to 17 U.S.C. § 106, Wondfo has the exclusive rights to reproduce, publicly display, and distribute Wondfo's Copyrighted Material.

35. Pursuant to 17 U.S.C. § 106, Wondfo has the exclusive right to prepare derivative works based upon Wondfo's Copyrighted Material.

36. Wondfo owns all right, title, and interest in and to Wondfo's Copyrighted Material.

37. MFB had access to Wondfo's Copyrighted Material, as Wondfo's Copyrighted Material has been available through purchase from at least the same online retail source (e.g., Amazon.com) as MFB's "Proov" PdG test, which is sold with MFB's infringing instructions, since as early as 2012 and no later than 2014.

38. MFB copied Wondfo's Copyrighted Material. As set forth above, the instructions enclosed with MFB's "Proov" PdG test are substantially similar to Wondfo's Copyrighted Material in that the look, feel, and contents of MFB's infringing material and Wondfo's Copyrighted Material are substantially similar. Defendant has infringed Wondfo's Copyrighted Material and violated Wondfo's copyright thereto.

39. Wondfo became aware that MFB was promoting, advertising, and offering for sale products using product descriptions and advertisements substantially similar to Wondfo's Copyrighted Material.

40. MFB has infringed and continues to infringe Wondfo's copyright to the copyrighted material by reproducing, publicly displaying, promoting, advertising, and offering

for sale products using instructions for use which are substantially similar to Wondfo's Copyrighted Material without Wondfo's authorization.

41. At a minimum, MFB has acted in reckless disregard of Wondfo's copyright interest in Wondfo's Copyrighted Material. Thus, MFB's infringement has been willful.

42. Wondfo is entitled to its actual damages, including MFB's profits from infringement, in amounts to be proven at trial.

43. MFB's conduct is causing and, unless enjoined by this Court, will continue to cause Wondfo irreparable injury that cannot fully be compensated or measured in money. Wondfo has no adequate remedy at law. Wondfo has been irreparably harmed by the infringing acts. Pursuant to 17 U.S.C. § 502, Wondfo is entitled to permanent injunctive relief prohibiting infringement of Wondfo's copyrights and exclusive rights under copyright.

WHEREFORE, Wondfo demands judgment against MFB as follows:

- A. A judgment finding that MFB copied Wondfo's Copyrighted Material and is liable for copyright infringement in each of the infringing acts;
- B. A judgment finding that MFB, and all those in active concert or participation with it, be permanently enjoined from infringement of Wondfo's copyrights in its copyrighted material pursuant to 17 U.S.C. § 502;
- C. A judgment and order for MFB to account for and turn over to Wondfo all copies or other articles by which copies of Wondfo's Copyrighted Material may be reproduced pursuant to 17 U.S.C. § 503;
- D. An award of Wondfo's actual damages, including MFB's profits, in amounts to be proven at trial;
- E. An award of attorneys' fees pursuant to 17 U.S.C. § 505;

F. An award of prejudgment and post-judgment interest to provide such other remedies under the copyright laws of the United States and/or as the Court deems reasonable and just; and

G. All other relief the Court deems just and fair.

Dated: October 15, 2024

Respectfully submitted,

/s/ Abram I. Moore

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on October 15, 2024, the foregoing document was filed electronically with the Clerk of the Court using the CM/ECF System, which will send an electronic copy of the foregoing to counsel of record and constitutes service pursuant to Local Rule 5.9 of the Northern District of Illinois.

/s/ Abram I. Moore
Abram I. Moore